

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

SAMSUNG ELECTRONICS CO., LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
IMPERIUM IP HOLDINGS (CAYMAN), LTD.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	<b>REDACTED -</b>
	)	<b>PUBLIC VERSION</b>

**COMPLAINT**

OF COUNSEL:

Jesse J. Jenner  
Christopher Harnett  
Steven Pepe  
Kevin J. Post  
ROPES & GRAY LLP  
1211 Avenue of the Americas  
New York, NY 10036  
(212) 596-9000

Samuel L. Brenner  
ROPES & GRAY LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
(617) 951-7000

John W. Shaw (No. 3362)  
SHAW KELLER LLP  
300 Delaware Ave., Suite 1120  
Wilmington, DE 19801  
(302) 298-0700  
jshaw@shawkeller.com  
*Attorneys for Plaintiff Samsung Electronics  
Co., Ltd.*

Dated: November 16, 2015

Plaintiff Samsung Electronics Co., Ltd. (“Samsung”) alleges as follows for its Complaint against Defendant Imperium IP Holdings (Cayman), Ltd. (“Imperium”):

**NATURE OF THE ACTION**

1. This is an action for breach of a contract that, upon information and belief, was negotiated at arms’ length between Defendant Imperium and [REDACTED]

[REDACTED] (Collectively, “Sony”), sophisticated parties who, upon information and belief, were represented at all times by counsel and who entered into a contract with the consent and advice of that counsel. Plaintiff is a third-party beneficiary of the rights conveyed by Imperium to Sony under that contract.

2. On March 30, 2011, Imperium filed a complaint in the United States District Court for the Eastern District of Texas, Sherman Division, against Sony Ericsson Mobile Communications (USA), Inc. (“Sony Mobile”), among other defendants, alleging infringement of five United States Patents. Imperium’s patent infringement case against Sony Mobile was assigned Civil Action No. 4:11-cv-163 (“the -163 action”).

3. Imperium and Sony entered into a confidential [REDACTED] Agreement (referred to herein as the “Sony License Agreement”) [REDACTED]

[REDACTED] In particular, under the terms of the Sony License Agreement, [REDACTED]

[REDACTED] Upon information and belief, the execution of the Sony License Agreement resolved all claims between the parties that were pending in the -163 action.

4. Importantly, as part of the Sony License Agreement, Imperium and Sony agreed that [REDACTED]

[REDACTED] Under the express terms of the Sony License Agreement, therefore, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, in the Sony License Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Upon information and belief, Sony negotiated for the inclusion of the [REDACTED] among other reasons, to benefit its customers, such as Samsung. Accordingly, Samsung is a third-party beneficiary under the Sony License Agreement.

5. On June 9, 2014, Imperium filed suit against Samsung in the Eastern District of Texas (“the -371 action”). In its complaint in that action, Imperium alleged that Samsung infringes the Asserted Imperium Patents by manufacturing, using, selling, offering for sale, and/or importing devices with image sensors or camera functionality. Some of the Samsung products accused in the -371 action include Sony sensors. Under the Patent Local Rules governing the -371 action, Imperium was required to provide detailed infringement contentions early in the case. In its initial disclosures, however, Imperium never, in the thousands of pages of contentions, identified a single Sony sensor as the basis for any infringement claim. Imperium’s contentions were never supplemented or amended during

discovery to identify any Sony image sensors. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Following completion of fact discovery in the -371 action on September 9, 2015, Imperium confirmed its breach of the Sony License Agreement when it provided its infringement contentions during expert discovery. In particular, certain claims of the Asserted Imperium Patents require an image sensor. And certain of the Samsung accused products include only a Sony image sensor. [REDACTED]

[REDACTED]

[REDACTED]

8. Samsung is facing irreparable harm from Imperium's breach and the impending trial in the -371 action. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Faced with Imperium's breach, and absent judicial intervention, Samsung will be subject to a patent trial on products that are [REDACTED]

[REDACTED] Samsung, moreover, has been injured in its business or property, and is threatened

by imminent loss of profits, loss of revenue, loss of customers and potential customers, loss of goodwill and product image, expense incurred through its need to defend against Imperium's improper claims of infringement, and through the possible imposition of patent damages and an injunction.

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Imperium is a Cayman Islands corporation with no product business to provide revenue. By virtue of its corporate structure and status as a non-practicing entity, Imperium has made itself essentially judgment proof, substantially eliminating any prospect for Samsung to recover its, damages, fees and costs.

### **PARTIES**

10. Plaintiff Samsung Electronics Co., Ltd. is a Korean company with its principal place of business at 416, Maetan 3-dong, Yeongtong-gu, Suwon-si, Gyeonggi-do 443-742, Korea.

11. On information and belief, Defendant Imperium has a place of business at 400 Madison Avenue, Second Floor, New York, New York 10022, and is incorporated in the Cayman Islands.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over the subject matter of this dispute pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, excluding interest and costs, and this action is between a citizen of a state and a citizen of a foreign state. In addition,

under 28 U.S.C. §§ 2201-2202, a current, actual and justiciable controversy exists between the parties, making a declaratory judgment action appropriate.

13. On information and belief, Defendant is subject to this Court's personal jurisdiction, consistent with principles of due process and the Delaware Long Arm Statute, at least because [REDACTED]

[REDACTED]

[REDACTED]

14. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1), (b)(2) and (c)(2).

### **GENERAL ALLEGATIONS**

#### **THE IMPERIUM-SONY LITIGATION AND SETTLEMENT AGREEMENT**

15. On March 30, 2011, Imperium filed a complaint in the United States District Court for the Eastern District of Texas, Sherman Division, against Sony Ericsson Mobile Communications (USA) Inc., among other defendants, alleging infringement of five United States Patents.

16. Imperium's complaint alleged that Sony Mobile products that included image sensors infringed Imperium's five patents.

17. Imperium and Sony entered into a confidential [REDACTED] Agreement. Upon information and belief, this Agreement settled Imperium's infringement claims and Imperium's complaint against Sony Mobile was dismissed on May 10, 2013.

18. The Sony License Agreement defined [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. The Sony License Agreement defined [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. The Sony License Agreement defined [REDACTED]

[REDACTED]

[REDACTED] The Sony License Agreement defined [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. Image sensors manufactured and/or sold by Sony are [REDACTED]  
under the Sony License Agreement.

23. The Sony License Agreement [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

24. The Sony License Agreement [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

25. The Sony License Agreement [REDACTED]

[REDACTED]

26. The Sony License Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Sony License Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Sony License Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **THE IMPERIUM-SAMSUNG PATENT LITIGATION**

29. On June 9, 2014, Imperium filed a complaint alleging patent infringement suit against Plaintiff in the Eastern District of Texas.

30. In its complaint, Imperium alleged that Samsung infringes United States Patent Nos. 6,271,884; 6,836,290; and 7,092,029 by manufacturing, using, selling, offering for sale, and/or importing devices with image sensors or camera functionality. These three patents are identified as [REDACTED] in the Sony License Agreement.

31. Samsung purchases image sensors from Sony for use in certain products, including products accused by Imperium of infringing the Accused Imperium Patents.

**IMPERIUM'S BREACH**

32. Image sensors manufactured and/or sold by Sony are [REDACTED] under the Sony License Agreement.

33. Samsung purchases image sensors from Sony for use in certain products, including certain of the Accused Samsung Products.

34. The Sony image sensors are [REDACTED] under the Sony License even after they are sold to Samsung.

35. Samsung, [REDACTED] is a third-party beneficiary under the Sony License Agreement.

36. Samsung, as a customer and/or end user of Sony image sensors, i [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The accused Samsung-Sony Products [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. Imperium has accused Samsung products of infringement, including those that use only Sony image sensors.

40. Imperium has necessarily relied upon Sony image sensors to satisfy at least one element of at least one claim of at least one Asserted Patent.

**CLAIMS FOR RELIEF**

**COUNT ONE  
(Breach of Contract)**

41. Samsung re-alleges and incorporates by reference its allegations set forth in Paragraphs 1-40 above.

As described above, Imperium and Sony entered into a [REDACTED]

[REDACTED]

[REDACTED]

43. As part of that Sony License Agreement, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Sony customers, including Samsung, are beneficiaries [REDACTED]

[REDACTED] of the Sony License Agreement.

[REDACTED] Pursuant to the Sony License Agreement, third parties, such as Samsung, who purchase Sony image sensors [REDACTED]

[REDACTED]

[REDACTED] This benefit to third-party purchasers of Sony image sensors, like Samsung, [REDACTED]

[REDACTED] Imperium breached its contractual commitment by [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48. As a result of this contractual breach, Samsung has been injured in its business or property, and is threatened by imminent loss of profits, loss of revenue, loss of customers and potential customers, loss of goodwill and product image, expense incurred through its need to defend against Imperium's improper claims of infringement, and through the possible imposition of patent damages and an injunction.

49. Samsung will suffer irreparable injury by reason of the acts, practices, and conduct of Imperium alleged above until and unless the Court enjoins such acts, practices, and conduct.

**COUNT TWO**  
**(Declaratory Judgment)**

50. Samsung re-alleges and incorporates by reference its allegations set forth in Paragraphs 1-49 above.

51. There is a dispute between the parties concerning whether Imperium breached its contractual obligations in the Sony License Agreement by [REDACTED]

[REDACTED]

[REDACTED]

52. The dispute is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

53. Absent the declaratory and injunctive relief requested from this Court, Samsung faces the imminent risk of impermissible claims by Imperium of infringement of [REDACTED], including infringement claims that Imperium intends to try to the jury.

54. Samsung therefore seeks declaratory judgment that Imperium has breached its contractual obligations to third-party beneficiary Samsung by bringing and maintaining a patent infringement claim with respect to the Asserted Imperium Patents against Samsung products [REDACTED]

**PRAYER FOR RELIEF**

WHEREFORE, Samsung prays for a judgment that:

- A. Imperium is liable for breach of contract;
- B. Samsung is a third-party beneficiary of the Sony License Agreement;
- C. Samsung is a [REDACTED] with respect to its products that [REDACTED]

[REDACTED]

D. Imperium has breached its contractual obligations to Samsung by maintaining its claim of infringement of any [REDACTED] against [REDACTED]

[REDACTED]

E. Imperium is enjoined preliminarily and permanently from maintaining any claim of infringement of any [REDACTED] against any [REDACTED]

[REDACTED]

F. Imperium shall pay to Samsung the amount of damages that Samsung proves at trial;

G. Samsung shall recover its expenses, costs, and attorneys' fees in accordance with Rule 54(d) of the Federal Rules of Civil Procedure [REDACTED]

[REDACTED];

H. Samsung shall receive such other and further relief as the Court deems just and proper.

### **JURY DEMAND**

Samsung demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ John W. Shaw

John W. Shaw (No. 3362)

SHAW KELLER LLP

300 Delaware Ave., Suite 1120

Wilmington, DE 19801

(302) 298-0700

jshaw@shawkeller.com

*Attorneys for Plaintiff Samsung Electronics  
Co., Ltd.*

OF COUNSEL:

Jesse J. Jenner

Christopher Harnett

Steven Pepe

Kevin J. Post

ROPES & GRAY LLP

1211 Avenue of the Americas

New York, NY 10036

(212) 596-9000

Samuel L. Brenner

ROPES & GRAY LLP

Prudential Tower

800 Boylston Street

Boston, MA 02199

(617) 951-7000

Dated: November 16, 2015